

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the present amendments and following discussion, is respectfully requested.

Claims 1-9 are currently pending, Claims 1 and 6 having been amended. The changes and additions to the claims do not add new matter and are supported by the originally filed specification, for example, on page 18, line 18 to page 19, line 1, and Fig. 8.

In the outstanding Office Action, Claims 1-2 and 4-10 were rejected under 35 U.S.C. §102(e) as being anticipated by Ohnishi (U.S. Patent No. 7,257,317); and Claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ohnishi in view of the Examiner's Official Notice.

With respect to the rejection of Claim 1 under 35 U.S.C. §102(e), Applicant respectfully submits that the amendment to Claim 1 overcomes this ground of rejection.

Amended Claim 1 recites, *inter alia*,

if the continuing mode is selected again after second data are recorded in a mode other than the continuing mode in a case where a proceeding of continuation is selected, third data to be newly recorded are associated with the first data, and in a case where a new continuation or stop of continuation is selected, third data to be newly recorded are not associated with the first data and new associated information is created.

In other words, in the continuing mode described in Claim 1, a selection can be made on whether the recording is performed using the already created association information ("a proceeding of continuation is selected") or using newly created associated information without using the already created associated information ("a new continuation or stop of continuation is selected"). Therefore, in the continuing mode defined by Claim 1, an association range where the data are associated with each other may be selected or determined.

Ohnishi is directed to a recording apparatus that associates moving image data with still picture data recorded during the recording of the moving image data. Fig. 2 of Ohnishi shows that between the start time (201) and end time (207) of recording a moving image, still pictures are recorded at times 203 and 205. The moving image file is given the file name “movie04.mpg” and the still pictures are given the names “still03.jpg” and “still04.jpg.” In Ohnishi, the moving image data and the still pictures are given their file names based on the next available file name for each file type. For example, Ohnishi describes that on disk D of the apparatus, moving image files “movie01.mpg” – “movie03.mpg” already exist, and still picture files “still01.jpg” and “still02.jpg” already exist. Hence, “movie04.mpg,” “still03.jpg,” and “still03.jpg” are chosen for the file names created in Fig. 2. (See col. 4, lines 21-33 of Ohnishi).

Additionally, the Office Action takes the position that Ohnishi describes “if the continuing mode is selected again after second data are recorded in a mode other than the continuing mode, third data to be newly recorded are associated with the first data that is newly recorded and associated with the first data,” as recited in original Claim 1. Fig. 4 of Ohnishi shows a separate moving image file “movie05.mpg” in the movie index along with the moving image file “movie04.mpg.” The Office Action takes the position that “movie05.mpg” corresponds to the claimed “third data” and “movie04.mpg” corresponds to the claimed “first data.” (See Office Action, at pages 2 and 3). However, the file “movie05.mpg” is a separate movie file and is not described as associated with the file “movie04.mpg.”

Thus, Ohnishi describes a continuing mode in which a moving image is recorded, but fails to disclose or suggest the continuing mode defined by amended Claim 1. In the continuing mode described in Ohnishi, unrelated data which are not associated with each other in terms of content only share a related file naming method.

Therefore, Ohnishi fails to disclose or suggest “if the continuing mode is selected again after second data are recorded in a mode other than the continuing mode in a case where a proceeding of continuation is selected, third data to be newly recorded are associated with the first data, and in a case where a new continuation or stop of continuation is selected, third data to be newly recorded are not associated with the first data and new associated information is created,” as recited in amended Claim 1.

Thus, Applicant respectfully submits that Claim 1 (and all associated dependent claims) patentably distinguishes over Ohnishi.

With respect to the rejection of Claim 3 under 35 U.S.C. §103(a), Applicant respectfully traverses this ground of rejection. Claim 3 recites, *inter alia*,

wherein said associated information are held even though a power source stopping state of a low consumption power in which a photograph and replaying operation are prohibited,

wherein an associated recording function is carried out pursuant to the associated information when the continuing mode is set again.

The Office Action admits that Ohnishi fails to disclose or suggest all of the features of previously presented Claim 3 (see Office Action, at page 5). However, the Office Action takes Official Notice with regards to the all of the features of Claim 3.

The MPEP §2144.03 states the following:

“Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).”

“It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. **For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.**” (Emphasis Added).

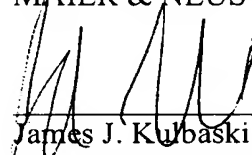
Claim 3 does not merely recite a function of holding *file names* even though a power source is turned off, as asserted in the Office Action. (See Office Action at page 5). Claim 3 recites “said associated information are held even though a power source stopping state of a low consumption power in which a photograph and replaying operation are prohibited, wherein an associated recording function is carried out pursuant to the associated information when the continuing mode is set again.” Applicant submits that this is an example of a technical fact in the area of esoteric technology or specific knowledge of the prior art that must always be supported by citation to some reference work recognized as standard in the pertinent art, as provided in the MPEP.

Therefore, Applicant respectfully submits that the rejection is improper and that the Examiner must withdraw the rejection or submit documentary evidence in a subsequent Office Action to support the assertion that all of the features defined in Claim 3 are well-known in the art.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'James J. Kulbaski', is written over a horizontal line.

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